

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

ANTONIO M. LACY,

Petitioner,

v.

**RICK THALER, Director
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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CIVIL CASE NO. 2:11-CV-00330


ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY

Before the Court is Petitioner's Request for a Certificate of Appealability. (D.E. 40.) An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding "unless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(A). A COA "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

Where a district court dismisses a petitioner's constitutional claims on procedural grounds, the petitioner must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. Daniel*, 529 U.S. 473, 484 (2000) (emphasis added). Petitioner's case was dismissed on procedural grounds. The Court finds that reasonable jurists would not find it debatable that

Petitioner cannot bring his cause of action as a habeas complaint. Accordingly, Petitioner's Request for a Certificate of Appealability (D.E. 40) is **DENIED**.

ORDERED this 12th day of July 2012.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE